# In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 467

STEBCO INCORPORATED, a corporation,

*Petitioner,*

vs.

RUPERT L. GILLMOUTHE, Sheriff of Hood River County, Oregon,

*Respondent.*

## BRIEF IN ANSWER TO A PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON


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## SUBJECT INDEX


| | Page |
|---|---|
| The Case | 1 |
| Authorities | 2 |
| Conclusion | 3 |


## TABLE OF AUTHORITIES CITED


| | |
|---|---|
| 110 A.L.R. 724 (note) | 2 |
| Champlain Realty Co. v. Town of Brattleboro, 260 U.S. 366 | 3 |
| Stebco v. Gillmouthe, decided August 29, 1950 (Case No. 4734, Vol. 50 of Advance Sheets, No. 28, page 1147) | 2 |

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### THE CASE

In this case there was no conflict as to facts. The defendant offered no testimony at the trial. The petitioner for certiorari to this Court, in its brief, suggests no erroneous finding as to facts.

The Supreme Court of Oregon simply held that where goods are turned over to a common carrier with instructions to store until needed at destination and to deliver them as needed and these instructions were given in the full knowledge that months of intermediate storage must result, that the goods, while so stored, were subject to taxation by the state of situs.

The Oregon Supreme Court decision in this case, *Stebco vs. Gillmouthe*, decided August 29, 1950 (Case No. 4734, Vol. 50 of Advance Sheets, No. 28, page 1147), sets forth fully the facts and no further statement is therefore deemed necessary.

## AUTHORITIES

The editors of A.L.R. in Volume 110, page 724, assert the long established rule in relation to taxation of goods delayed in interstate shipment to be

> "Whether delays in interstate transit extending over three or more states will create a taxable situs in an intermediate state will largely depend upon the nature and duration of the delay—whether it is incident to the transportation of the property, or to accomplish some ulterior purpose of the owner not connected with such transportation."

The decision of the Oregon Supreme Court in this case in no way conflicts but merely declares the delay in shipment to be for the shipper's convenience. All the valuable citations are collected in the above mentioned A.L.R. note.

## CONCLUSION

It is not the purpose of the constitutional provision against taxation of goods in interstate commerce to furnish a cloak permitting simple evasion of local taxation. The facts of this case amount simply to a storage after commencement of and before the end of an interstate shipment. Eight months was the average storage time of these logs rafts. Nobody questions that this storage was planned for and paid for by the plaintiff (petitioner herein). Plaintiff only claims it didn't know or care where the storage was accomplished.

Should petitioner's contention be sustained, a contract may be made to ship whiskey from Kentucky to New York, delivery to be made as a certain warehouse is emptied of other goods. By controlling the availability of storage facilities at destination a long intermediate storage, free of local taxation, can be arranged. The present rule, as above cited from A.L.R. prevents this.

The tests applied in *Champlain Realty Co. v. Town of Brattleboro,* 260 U.S. 366, are unquestionably sound tests to be applied. Petitioner does not correctly apply them to this case, however, in the following particulars:

### Intention of Owner and Occasion for Delay

Shipper intended no direct continuous shipment but required and arranged and paid for an eight months' delay in a 60 mile downstream shipment by towage. Shipper's logs had to be stored eight months before they

were needed or could be cared for at destination. This combined shipment and storage was the shipper's need and planned result. It included storage over tax day (Jan. 1) and hence included this claimed tax evasion.

The petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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## REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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## REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

Petitioner cannot leave unchallenged respondent's statement that the interruption of the log transportation and the storage of rafts at intermediate points was intended, and prearranged and paid for, by petitioner. Respondent's brief states categorically that petitioner "intended no direct continuous shipment but required

and arranged and paid for an eight months' delay in a 60-mile downstream shipment by towage" (Res. Br. p. 3).

Respondent refers to no evidence as supporting this statement. Obviously the statement is based upon what is said in the opinion of the Supreme Court of Oregon on this subject. The Court said (R. 44):

> " . . . it was never intended that all of the rafts should move without pause from the place of origin to Smith's moorage at Vancouver. At the very outset it was agreed that the immediate destination of many of the rafts should be an intermediate moorage basin, to be selected by Smith."

There is no evidence in the record to support any such statement. The facts (as correctly summarized by the trial court, R. 7) are as follows:

Petitioner's arrangement with the towboat operator called for transportation from the point of shipment to destination, and for storage service *at the conclusion of the transportation* (R. 27-28). The towboat operator's moorage at the destination point was used as a storage depot and petitioner took logs therefrom, using another towing agency, as they were needed in its lumber manufacturing operations (R. 11, 17, 23, 24, 27).

This storage depot was used in the handling of logs for other concerns (R. 24). It became filled to capacity and the towboat operator, instead of enlarging it or arranging for other moorage in the vicinity, adopted the practice of delaying petitioner's log rafts at convenient points in both Washington and Oregon, between the

shipping point and destination. Petitioner learned of this practice but had nothing to do with its adoption or use (R. 12, 23, 24).

Petitioner paid the towboat operator only the transportation charge. No extra charge was made because of the detention in the coves in Hood River County, Oregon, of the rafts against which the taxes were levied (R. 23).

The tests applied in *Champlain Realty Co. v. Town of Brattleboro,* 260 U.S. 366, which respondent agrees are "unquestionably sound tests" (Res. Br. p. 3) are therefore applicable. The delay in the interstate transit was not intended "to accomplish some ulterior purpose of the owner not connected with such transportation," but was "incident to the transportation of the property." 110 A.L.R., p. 724.

Inland waterway transportation is not intended to be fast transportation. It is useful in the movement of commodities which may be delayed as the exigencies of the transportation agency may require. *Interstate Commerce Commission v. Mechling,* 330 U.S. 567, 570; *U. S. War Department v. A. & S. Ry. Co.,* 92 I.C.C. 528, 546.

Petitioner submits that the commerce clause of the Constitution forbids the taxation of interstate shipments merely because they are held at intermediate locations in the river by the transporting agency for its convenience.

The decision of the Supreme Court of the State of Oregon approving the taxation of petitioner's log rafts

is in conflict with the applicable rule laid down by this Court and should be reversed.

Respectfully submitted,

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